

Calendar No. 1252

77TH CONGRESS }
2d Session }

SENATE

{ REPORT
No. 1213

LT. COL. S. W. McILWAIN

MARCH 26 (legislative day, MARCH 5), 1942.—Ordered to be printed

Mr. BROWN, from the Committee on Claims, submitted the following

REPORT

[To accompany H. R. 3722]

The Committee on Claims, to whom was referred the bill (H. R. 3722) for the relief of Lt. Col. S. W. McIlwain, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The facts are fully set forth in House Report No. 1715, Seventy-seventh Congress, second session, which is appended hereto and made a part of this report.

[H. Rept. No. 1715, 77th Cong., 2d sess.]

The Committee on Claims, to whom was referred the bill (H. R. 3722) for the relief of Lt. Col. S. W. McIlwain, having considered the same, report favorably thereon with an amendment and recommend that the bill, as amended, do pass.

The amendment is as follows:

At the end of the bill, add:

“: *Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.”

The purpose of the proposed legislation is to pay to Lt. Col. S. W. McIlwain, Quartermaster Corps, constructing quartermaster, Baltimore, Md., the sum of \$53.12 as reimbursement of his personal payment of two advertising orders in connection with an official project known as the Municipal Airport of Frederick, Md., which project was constructed for the One Hundred and Fourth Observation Squadron.

STATEMENT OF FACTS

In connection with the construction of a hangar at the Municipal Airport, Frederick, Md., Lt. Col. S. W. McIlwain ordered the insertion of advertisements in the Sun and News-Post of Baltimore on November 10, 11, 12, and 13, 1940, before the receipt of authority to advertise, in contravention of the provisions of Revised Statutes 3828 which prescribe that no advertisement, notice, or proposal for any executive department of the Government, or for any bureau thereof, or for any office therewith connected, shall be published in any newspaper whatever, except in pursuance of a written authority for such publication from the head of such department; and no bill for any such advertising or publication shall be

paid unless there be presented, with such bill, a copy of such written authority. In the instant case, authority to advertise was not given until November 14, 1940, and Lieutenant Colonel McIlwain, with his personal check, paid in like amount on February 13, 1941.

The War Department carefully investigated the facts surrounding this case, and found that the bills in question were incurred in good faith, with the view of expediting the constructing of the aforesaid hangar, and without fault or neglect on the part of Lieutenant Colonel McIlwain. The War Department recommends the enactment of the legislation, in which your committee concurs.

Appended hereto is the report of the War Department, together with other pertinent evidence.

WAR DEPARTMENT,
Washington, May 5, 1941.

HON. DAN R. McGEHEE,
Chairman, Committee on Claims, House of Representatives,
Washington, D. C.

DEAR MR. McGEHEE: The War Department favors the enactment of H. R. 3722, Seventy-seventh Congress, which would pay to S. W. McIlwain, lieutenant colonel, Quartermaster Corps, constructing quartermaster, Baltimore, Md., and vicinity, the sum of \$53.12 in full settlement of all claims against the United States for reimbursement of his personal payment of two advertising orders in connection with an official project known as the Municipal Airport, at Frederick, Md., which project was constructed for the One Hundred and Fourth Observation Squadron.

In connection with the construction of a hangar at the Municipal Airport, Frederick, Md., Lt. Col. S. W. McIlwain ordered the insertion of advertisements in the Sun and News-Post, of Baltimore, on November 10, 11, 12, and 13, 1940, before receipt of authority to advertise, in contravention of the provisions of Revised Statutes 3828 (44 U. S. C. 324) which prescribe that no advertisement notice, or proposal for any executive department of the Government, or for any bureau thereof, or for any office therewith connected, shall be published in an newspaper whatever, except in pursuance of a written authority for such publication from the head of such department; and no bill for any such advertising or publication shall be paid unless there be presented, with such bill, a copy of such written authority. The Comptroller of the Treasury ruled, under date of October 15, 1898 (5 Comp. Dec. 166), that such written authority by the head of the department concerned is required to be given before publication of the advertisement, notice, or proposal, and that a subsequent approval or ratification will not legalize publication without such previous authority. In the instant case, authority to advertise was not given until November 14, 1940, the day following the final insertion. Lieutenant Colonel McIlwain was, therefore, required to refund to the United States the cost of said advertisements, \$53.12, which he did by personal check in a like amount forwarded to the finance officer, Fort McHenry, Baltimore, Md., on February 13, 1941.

The War Department has carefully investigated the facts surrounding this case and is of the opinion that the bills in question were incurred in good faith, in the interest of the United States, with a view to expediting the construction of the aforesaid hangar, and without fault or neglect on the part of Lieutenant Colonel McIlwain.

Therefore, as stated above, the Department favors the enactment of the proposed legislation.

Sincerely yours,

HENRY L. STIMSON,
Secretary of War.

[QM 486.5 C-NL (Municipal Airport, Frederick, Md.). Sixth endorsement]

WAR DEPARTMENT,
OFFICE, QUARTERMASTER GENERAL,
Washington, D. C., December 30, 1940.

To the CONSTRUCTING QUARTERMASTER,
Baltimore, Md., and vicinity, Baltimore, Md.:

1. The attached advertising vouchers forwarded under basic communication are returned herewith. Your attention is invited to remarks contained in fifth endorsement hereon from the administrative assistant, War Department.

For the Quartermaster General:

DONALD E. ANTES,
Captain, Quartermaster Corps, Assistant.

[QM 486.5 C-NL December 9, 1940 (Municipal Airport, Frederick, Md.). Seventh endorsement]

OFFICE CONSTRUCTING QUARTERMASTER,
Baltimore, Md., February 13, 1941.

To FINANCE OFFICER,
Fort McHenry, Baltimore, Md.:
(Attention Miss McGrain).

1. Colonel McIlwain's personal check, made payable to the Treasurer of the United States in the amount of \$53.12, is enclosed herewith to cover \$17.12 disapproved on advertising order No. 6 for the Baltimore News-Post, and \$36 on advertising order No. 5 for the Sun, referred to in preceding endorsements.

S. W. McILWAIN,
Lieutenant Colonel, Quartermaster Corps,
Constructing Quartermaster.

[Fifth endorsement]

WAR DEPARTMENT, December 27, 1940.

To OFFICE OF THE QUARTERMASTER GENERAL,
Washington, D. C.:

1. Accounts Nos. 3 and 4 of 41757, in favor of the Engineering News-Record, New York, N. Y., and the Real Estate Record, New York, N. Y., are again returned for payment.

2. The two insertions of November 23 and 25, 1940, of accounts Nos. 1 and 2 of 41757, in favor of the Baltimore (Md.) Sun and the Baltimore (Md.) News-Post, are approved for payment. The insertions of November 10, 11, 12, and 13, 1940, in favor of the Sun and the News-Post, were made before authority No. 41757 was granted and cannot be approved by this office. Authority to advertise No. 41757 was granted November 14, 1940.

3. The Judge Advocate General in opinion dated September 24, 1937, stated: "This office has repeatedly expressed the opinion that where the publication of and advertisement in a newspaper has been ordered without written authority therefor as required by section 3828, Revised Statutes, the War Department cannot by subsequent ratification render such publication lawful so as to justify payment therefor (J. A. G. 400.1511, Apr. 26, 1921; id., Oct. 25, 1921; id., Sept. 6, 1932), and the records of this office show that under date of January 20, 1906, the Assistant Secretary of War issued instructions on the subject, which provided, in part:

"* * * When advertisements are published without antecedent authority as required by Army regulations and these instructions, the officer who is responsible for the failure to secure it will be required to pay the newspaper accounts from his private funds and look to Congress for reimbursement. Let these cases be presented to Congress as the officers are not regarded as in fault."

"It follows from the above that the authority which section 3828, Revised Statutes, requires for publication of newspaper advertising must be obtained in advance of publication of the advertising."

4. In view of the Judge Advocate General's opinion quoted in part above, which was concurred in by the Secretary of War, it is regretted that the four insertions of the accounts of the Baltimore Sun and the Baltimore News-Post cannot be audited for payment by this office.

J. C. COOK,
Acting Assistant Chief Clerk.

[C-NC 600. 1 December 9, 1940 (Frederick), third endorsement]

OFFICE CONSTRUCTING QUARTERMASTER,
Baltimore, Md., December 18, 1940.

To the QUARTERMASTER GENERAL, Washington, D. C.:

1. Request for immediate authority to advertise was made in accordance with our immediate action letter, Subject: Request for authority to advertise, dated November 9, 1940, in order to expedite the letting of contracts for the construction of the Air Corps hangar, at Frederick, Md.

2. The information and authority relative to the construction of this hangar which was of an emergency character, was obtained on November 9, 1940, and,

in order to secure the "widest possible competition," it was absolutely imperative that advertising be resorted to as of the dates indicated in paragraph 2, first endorsement, without waiting for the confirming authority which was not received in this office until November 20, 1940.

3. In view of the foregoing and in accordance with our basic request, as indicated in paragraph 1 supra, it is requested that authority No. 41757 be reissued as of November 9, 1940.

S. W. McILWAIN,
*Lieutenant Colonel Quartermaster Corps,
Constructing Quartermaster, Baltimore, Md. and Vicinity.*

[QM 486, 5 C-NL (Frederick) Adv. Fourth endorsement]

WAR DEPARTMENT,
OFFICE OF THE QUARTERMASTER GENERAL,
Washington, D. C., December 21, 1940.

To the ADMINISTRATIVE ASSISTANT,
War Department, Washington, D. C. (Printing and Advertising Section.)

1. Forwarded and inviting attention to remarks contained in third endorsement hereon.

For the Quartermaster General:

DONALD E. ANTES,
Captain, Quartermaster Corps, Assistant.

[First endorsement]

WAR DEPARTMENT, *December 10, 1940.*

To OFFICE OF THE CONSTRUCTING QUARTERMASTER,
Baltimore, Md.

(Through office, Quartermaster General.)

1. Accounts Nos. 3 and 4 of 41757, having been audited, are returned for payment.

2. Account No. 1 of 41757, in favor of the Baltimore (Md.) Sun, and account No. 2 of 41757, in favor of the Baltimore (Md.) News-Post, are returned calling attention to the insertions of November 10, 11, 12, and 13, 1940, which were made before authority No. 41757 was granted. Authority to advertise No. 41757 was granted November 14, 1940. In this connection attention is invited to paragraph 14 (a) section III, of Army Regulation 5-140, dated May 22, 1940. The written authority of the head of the Department required by section 3828, Revised Statutes, for publishing in any newspaper any advertisement, notice, or proposal is required to be given before publication thereof, and a subsequent approval or ratification will not legalize publication without such previous authority (5 Comp. Dec. 166).

F. M. HOADLEY,
Assistant Chief Clerk.

[QM 486.5 C-NL (Municipal Airport, Frederick, Md.). Second Endorsement]

WAR DEPARTMENT,
OFFICE OF QUARTERMASTER GENERAL,
Washington, D. C., December 12, 1940.

To the CONSTRUCTING QUARTERMASTER,
Baltimore, Md., and Vicinity, Baltimore, Md.

1. The following advertising vouchers which were forwarded by your office direct to the administrative assistant, War Department, on December 9, have been returned to this office for correction. Particular attention is invited to remarks contained in paragraph 2 of first endorsement hereon from the office of the Assistant Secretary of War in regard to these vouchers:

(a) The Sunpapers.....	\$54.00
(b) Baltimore News-Post.....	25.68
(c) Engineering News-Record.....	7.50
(d) Real Estate Record.....	4.20

2. In this connection, you are advised that in the future when you submit advertising vouchers for audit and approval of payment, you will comply with Army Regulations and forward same through this office.

For the Quartermaster General:

DONALD E. ANTES.
Capt. (Inf-Res.), QM-Res., Assistant.

WAR DEPARTMENT,
OFFICE OF THE CONSTRUCTING QUARTERMASTER,
BALTIMORE, MD., AND VICINITY,
December 9, 1940.

C-NC 600.1 (Frederick)

Subject: Advertising vouchers for audit.

To: Administrative Assistant, War Department, Munitions Building, Washington, D. C.

1. In connection with the proposed construction of one Air Corps hangar (120-foot, temporary), Municipal Airport, Frederick, Md., there are enclosed herewith advertising vouchers Nos. 5, 6, 7, and 8 for audit.

S. W. McILWAIN,
*Lieutenant Colonel, Quartermaster Corps,
Constructing Quartermaster, Baltimore, Md., and Vicinity.*

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